WORKERS' COMPENSATION IN

NOVA SCOTIA

" THE TURNING POINT "

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APPOINTMENT

The Ministerial Action Group (MAG) was appointed by the Honourable Brian Young, Minister of Labour for the Province of Nova Scotia, in October of 1986.

PRESENTATION

Ministerial Action Group members were Mr. Edward MacNeil, International Representative for the International Brotherhood of Electrical Workers; Mr. John Guildford, a prominent Dartmouth businessman; and chairperson was Catherine Gardiner, a retired education professional.

MANDATE

The MAG was given a broad and unencumbered mandate by the Minister to review the Workers' Compensation Act and to review the policies and practices of the Workers' Compensation Board and the policies and practices of the Workers' Compensation Appeal Board.

TERMS OF REFERENCE

No constraints were placed on our activities other than time constraints. The Minister requested the MAG submit an interim report before the end of the fall of 1987 containing those recommendations which did not require legislative change, and a final report at or near the beginning of 1988 containing those recommendations which require legislative action.

However, the MAG determined early in the review process, because so many recommendations are dependent on the successful change in related areas, that it would be more feasible to submit one complete document for the consideration of and action by government.

REPRESENTATIONS

The MAG was appointed at a time when similar reviews were taking place in other jurisdictions of Canada and much of the findings of groups such as the review in the Northwest Territories and the provinces of Saskatchewan and Manitoba proved beneficial to the work of the Nova Scotia review.

The MAG opened an office in Halifax, hired administrative support staff, research support staff and retained, on an as required basis, legal and financial consultative services.

Public hearings were held in Amherst, Bridgewater, Kentville, Yarmouth, New Glasgow, Port Hawkesbury, Sydney and Halifax. Private hearing sessions to accommodate individuals and groups who wished to make their feelings and recommendations known in a more personal forum, were held in Amherst, Kentville, New Glasgow, Sydney and Halifax.

The MAG met extensively with representatives of the Workers' Compensation Board in Nova Scotia including both the divisional Directors and the members of the Board of Commissioners. The MAG also attended hearings conducted by the Workers' Compensation Appeal Board in Sydney and met with the Chairman of the Workers' Compensation Appeal Board, the Executive Director and two other Appeal Board members.

The MAG sent research personnel to the Workers' Compensation Board of New Brunswick to make specific inquiries regarding the New Brunswick wage loss system.

The MAG also travelled to the province of Ontario where extensive meetings were held with Claims, Assessments and Rehabilitation representatives of the Ontario Workers' Compensation Board; representatives of the Appeals Tribunal of the Ontario Workers' Compensation Board; and as well the MAG members met with the Executive Director of the Workers' Compensation Rehabilitation Hospital in Downsview, Ontario.

The MAG travelled to the provinces of Saskatchewan, Alberta and British Columbia where extensive meetings were held with representatives of the Workers' Compensation Board in those provinces, particularly with representatives of the Claims, Assessments and Rehabilitation divisions of those respective Boards.

GENERAL COMMENTS

The MAG was most impressed with the depth of recommendations made to the Group for consideration by individuals and groups who deal with the Workers' Compensation Board or who are either affected by the Workers' Compensation Act or the policies and programs of the Workers' Compensation Board.

The MAG is also most grateful for the co-operation of the management and staff of the Workers' Compensation Board of Nova Scotia for their on-going support of the goals of the MAG and for their expedient response to queries from the Committee.

It is more than fair to say, without fear of contradiction and much to the credit of the management of the WCB, that the administrative structure of the Workers' Compensation Board as well as their policies and procedures were undergoing major review and amendment at the time of this review.

The MAG was certainly encouraged by a number of factors, which will be addressed later in this report, where the Workers' Compensation Board management have recognized some of the inconsistencies in the administration of the Workers' Compensation Act of Nova Scotia and have implemented new policies and programs to improve the delivery of their services to employers and the injured workers of this province.

THE FUNDAMENTAL PRINCIPLE OF COMPENSATION

Very early in the review process, MAG members realized that few people involved in the Nova Scotia business or labour community desired major changes in the fundamental principle of workers' compensation in this province.

While the MAG heard constant recommendations for amendment or changes to policies and procedures or in the Board's interpretation of various sections of the Workers' Compensation Act, few recommendations were presented indicating a need for a total revamping of the basic principles of collective liability no fault insurance benefits for workers temporarily injured or permanently disabled in the course of their employment.

The MAG finds total agreement with the premise that the basic principles of compensation, in place in this province since 1917, are sound and just, therefore all of the recommendations of this Group are predicated on the committee's desire to entrench those principles firmly in the legislation and in the policies and practices of the Workers' Compensation Board and the Workers' Compensation Appeal Board.

CONSENSUS REPORT

The members of the MAG were most pleased to reach consensus on all issues presented to it for consideration and recommendation and are therefore gratified to present a majority report to the Minister of Labour and to the government of Nova Scotia for their consideration.

ADVERSARIAL EVOLVEMENT

The MAG has great concern with the increasing evolvement, since the creation of the Workers' Compensation Appeal Board in 1975, of a growing adversarial and advocacy role in the compensation system in this province; subsequently a number of recommendations are predicated on the MAG's desire to simplify the system and curtail growth of the adversarial approach most specifically in the appeal processes of the Board and of the Workers' Compensation Appeal Board.

APPEAL PROCESS

There exists delays in the appeal processes of the Workers' Compensation Board and the Workers' Compensation Appeal Board. Some of the these delays are attributable to the Board, some to the Appeal Board, some to workers' counsellors, and some of the delay is attributable to delays in acquiring new medical evidence to support appeals.

A delay in any level of the appeals decision making process results in unnecessary hardship to claimants pursuing benefits through the appeals system.

The MAG, by the recommendations contained hereafter relating to both the internal and external appeal process hopes to:

1. expedite and to reduce the number of claims going to appeal

2. simplify procedures

3. facilitate a less formal and more expedient process which should:

   (a) improve the plight of injured workers caught up in the appeal process

   (b) lessen the advocacy and adversarial evolvement currently plaguing compensation systems in this province and in this country.

EXISTING APPEAL PROCESS

Under the existing procedures of the Workers' Compensation Board there are three levels of internal appeal. However, under the present system a person aggrieved by a decision of the Board may by-pass the internal appeal procedures and go directly to the external Workers' Compensation Appeal Board for a review of the decisions made on their claim.

Inherent in this system are three factors which cause major concern for the Ministerial Action Group:

1. often injured workers with new or additional medical evidence could have their claim more expediently dealt with by submitting their information or evidence directly to the Board.

2. the Workers' Compensation Appeal Board, in many cases, is making decisions on claims which contain evidence the Workers' Compensation Board has never had the opportunity to adjudicate, so in effect, the Appeal Board could more aptly be described as a second level of adjudication rather than strictly a Board of Appeal.

3. Workers' Counsellors appointed by the government to assist injured workers when dealing with the Board are at times becoming involved in such a manner as to cause undue delay to the processing of claims and unwarranted costs to government.

The current system provides that a person aggrieved by a decision of the Workers' Compensation Board may appeal to the Workers' Compensation Appeal Board according to Section 159E of the Workers' Compensation Act on the grounds that:

(a) the medical opinion upon which compensation was given or refused was erroneous or incomplete; or

(b) a greater functional disability exists than found by the Board; or

(c) a continuance of compensation beyond the period allowed by the Board may be required.

In actual fact, according to information given to the MAG by the members of the Workers' Compensation Appeal Board themselves, it is the standard practice of the Appeal Board to hear only appeals based strictly on <u>new</u> medical evidence.

The MAG feels both the existing Act and the current practice of the Appeal Board denies injured workers full rights of appeal of all decisions made by the Workers' Compensation Board relative to an individual's claim whether they be related to the processing of the claim, the level of benefits received, participation in rehabilitation programs, medical examinations or whatever.

This would appear to be a natural denial of justice to injured workers and represents cause for concern by the Ministerial Action Group.

The following recommendations represent a package approach to the total appeal process and, when examined in whole, should provide a process which affords all injured workers the opportunity to:

1. be heard
2. to be heard expediently
3. to have the right to an opportunity of redress
4. to be afforded all the benefits and protection contained in the Workers' Compensation Act of Nova Scotia.

INTERNAL APPEAL PROCESS

It is the feeling of the Ministerial Action Group that new or additional evidence should and must and, for the purposes of our recommendations, <u>shall</u> be submitted to the Workers' Compensation Board for primary adjudication.

This change in procedure should reduce not only the number of files going to the Appeal Board unnecessarily, but should also expedite benefits to workers who are deserving of them.

Therefore, **we recommend the internal appeal process be compulsory**. The requirement for the internal appeal process to become compulsory necessitates a number of amendments to existing policies, procedures and administration in the Claims Division of the Workers' Compensation Board.

Presently there are three levels of internal appeal in existence at the Workers' Compensation Board. They are:

1. to the claims adjudicator
2. to the review committee
3. to the Board of Commissioners

Under **the compulsory system proposed** by the Ministerial Action Group the first level of appeal **to the claims adjudicator will remain.** This is the individual most familiar with the facts of a claimant's file. The claims adjudicator will accept new evidence and/or additional documentation relevant to the claim.

AUTOMATIC REFERRAL

If a claims adjudicator either denies an appeal of a claims decision supported by new evidence, **the file will automatically be referred to the second level of internal appeal** for process and consideration.

The **claimant shall be notified in writing** of the decision of the claims adjudicator and of the fact the file has been referred automatically to the second level of appeal.

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SECOND LEVEL - INTERNAL APPEAL

The MAG recommends a change in the internal appeals process. Presently it is the practice for a three member review committee consisting of senior members of the Claims Department to review a decision of a claims adjudicator.

The present review committee approach has peers of claims adjudicators reviewing decisions made by their fellow workers. While there is no indication this system has failed in its obligation of fair and objective review, it could be successfully argued that, in fact, there exists the potential for a subjective approach to the review process.

It is the wish of the MAG to remove the potential for subjective decision making and establish a clear and concise forum of independent and objective review, therefore the MAG recommends **the review committee be abolished and that the second level of appeal be to an independent senior claims adjudicator(s), to be called a Claims Referee(s)**.

The Claims Referee(s) will be located in an area outside the claims processing area of the Board. The Claims Referee(s) will report directly to the Director of Claims.

The Claims Referee(s) will review the evidence contained in the file and determine whether in fact the correct decision was rendered. **The Claims Referee(s) will be required to make a decision relevant to the appeal within 14 days of receipt of the file.**

If the appeal is granted, the Claims Department will be ordered by the Claims Referee(s) to amend their decision and the claimant will be notified immediately in writing of such a decision.

Should the appeal be refused, the Claims Referee(s) will notify the claimant in writing of the decision and the reasons for such a decision. The Claims Referee(s) will also advise the claimant of the third and fourth steps of the Appeal process.

THIRD LEVEL OF APPEAL - BOARD OF COMMISSIONERS

The MAG has examined the past and present role of the Board of Commissioners of the Workers' Compensation Board. It was noted by the MAG that many Boards in Canada have recently opted for part time Boards of Commissioners.

During past years, at least prior to 1985, it was the standard practice for the members of the Board of Commissioners to not only set policy for the Board and to serve as a third level of internal appeal, but also to become involved directly in the day to day business of the Board.

It is the understanding of the MAG that a number of management studies commissioned by the Board itself determined and recommended a substantially reduced role for the present Board.

The MAG is extremely supportive of this position and in fact subsequent recommendations by the MAG will support our view that **essentially the Board of Commissioners' primary function will be one of internal appeal.**

The MAG recommends <u>the current full time Board of Commissioners of the Workers' Compensation Board of Nova Scotia be abolished in favour of a part time Board of Commissioners with a dual responsibility - primary role of internal appeal - secondary role of policy and budget approval.</u>

The Board of Commissioners will be comprised of a full time Chairman/General Manager, a full time Chief Commissioner of Appeals, and nine part time commissioners.

The **Chairman/General Manager** shall be appointed by the Governor-in-Council to age 65 on good behaviour and shall receive remuneration equivalent to Deputy Minister status within the provincial civil service salary classification.

The **Chief Commissioner of Appeals** shall be appointed by the Chairman/General Manager of the Workers' Compensation Board in consultation with the Minister of Labour and shall receive remuneration deemed appropriate by the Chairman/General Manager in consultation with the Minister of Labour.

Part-time members of the Board of Commissioners shall be appointed by the Governor-in-Council for a period to be determined by the Governor-in-Council and shall receive remuneration on a per diem basis as determined by the Governor-in-Council.

Three members should be appointed by the Cape Breton area of the province and six members from mainland Nova Scotia. Three commissioners will constitute a quorum for an **appeal panel**; a majority decision will consist of the consent of any two members of an Appeal Panel.

The Chief Commissioner of Appeals will appoint a chairperson to chair meetings of three regional appeal panels. Theoretically with nine part time members, the Board could be holding three appeals at the same time in three different areas of the province. This process should reduce the potential for unnecessary delay substantially.

The Chief Commissioner of Appeals will be the chairperson of regular meetings of the Board of Commissioners unless the Chairman/General Manager is present. It should be noted, however, that the standard practice should be that the Chairman/General Manager not be involved in the appeal process or the appeal role of the Board of Commissioners.

The **Chief Commissioner of Appeals** will be responsible for scheduling appeals and administering the office and duties associated with the appeal role of the Board of Commissioners.

APPEAL ROLE - BOARD OF COMMISSIONERS

A claimant having been denied benefits by the claims adjudicator and the claims referee(s) may appeal to the Board of Commissioners by giving notice of intent to appeal in writing to the Chief Commissioner of Appeals.

The Board of Commissioners will have the power to call witnesses, hear testimony, amend or alter decisions made by the claims adjudicator or the claims referee(s) and seek outside medical or legal advice on the medical or legal aspects of a claimant's file, as is required.

An appeal to the Board of Commissioners must be scheduled and heard within 30 days of receipt of application by the Chief Commissioner of Appeals from the claimants. Extensions may only be granted under extenuating circumstances by application from a claimant or if by the determination of the Chief Commissioner of Appeals additional time is required to obtain legal or medical advice.

The Board of Commissioners shall not hear new evidence or accept additional medical reports not already contained in the file submitted for an appeal. Each file shall be judged by the Board of Commissioners on the merits contained in the file at the time of receipt.

All new evidence and or medical reports shall be presented to the claims adjudicator for consideration and decision. The Ministerial Action Group is emphatic that each and every level of appeal shall be informal and that claimants shall be given every opportunity to express their concerns in an atmosphere which is conducive to their circumstance and abilities.

POLICY & BUDGET ROLE - BOARD OF COMMISSIONERS

The Chairman/General Manager shall chair all meetings of the executive committee of the Board of Commissioners. The executive committee of the Board of Commissioners will be comprised of the Chairman/General Manager, the Chief Commissioner of Appeals and the chairpersons of each of the three regional appeal panels.

The Executive Committee of the Board of Commissioners shall meet quarterly but may meet more frequently at the request of the Chairman/General Manager.

The Chairman/General Manager and two other members of the executive committee will constitute a quorum and a majority vote of the quorum present will constitute a decision.

The Executive Committee of the Board of Commissioners will consider policies and budgets submitted to the Board by the Chairman/General Manager of the Workers' Compensation Board; however, the formulation of policies and budgets shall be the responsibility of the Chairman/General Manager and the Board of Directors of the Workers' Compensation Board.

WORKERS' COUNSELLORS - INTERNAL APPEAL

The MAG sees little necessity if any for workers' counsellors to become involved in the administering or appealing of a worker's claim with the Worker's Compensation Board and only rarely at the third level of internal appeal.

The MAG recommends the decision to involve workers' counsellors at the first, second and third level of internal appeal shall be by mutual agreement between the Chief Workers' Counsellor and the Chief Commissioner of Appeals.

WORKERS' COMPENSATION APPEAL BOARD

During the public and private hearing process the MAG heard extensive comments and recommendations relating to the Workers' Compensation Appeal Board. Few of these comments and recommendations were complimentary.

Injured workers identified concerns regarding their treatment by the Appeal Board; workers' counsellors expressed their concerns regarding inconsistencies in the decision making process of the Appeal Board; employers expressed their concerns regarding the decision making process of the Appeal Board, particularly as it excluded employers from participating in the external appeal process; and, the Workers' Compensation Board in their submission to the MAG identified a number of specific concerns the WCB had with decisions made by the Workers' Compensation Appeal Board.

The MAG monitored a number of appeals, met with the Chairman of the Workers' Compensation Appeal Board, two Appeal Board members, the executive director of the Appeal Board and existing appeal processes in other jurisdictions were reviewed and examined.

The MAG found there is a basic agreement amongst all parties that there is a necessity for an external appeals process, however, there is little general agreement on the form such an external appeal process should take.

Certainly there were a broad range of recommendations made to the MAG on how best to achieve the most ideal external appeal process. While the MAG finds a measure of merit with many recommendations no singular suggestion met the expressed requirements of all employers and employees.

Therefore, the MAG has taken all factors raised during our public and private hearing process, applied these to the research of the committee itself, and makes the following recommendations.

First and foremost, there exists great confusion when talking to individuals who made recommendations to the MAG as to whether these recommendations applied to the Workers' Compensation Board or the Workers' Compensation Appeal Board.

OCCUPATIONAL COMPENSATION APPEALS COUNCIL

Therefore, the MAG recommends the name of the Workers' Compensation Appeal Board be changed to the Occupational Compensation Appeals Council (OCAC) so that ongoing confusion between the two bodies be reduced in the future.

The OCAC will be comprised of a part time chairman and nine part time members. The chairperson shall be appointed by the Minister of Labour for a term of five years.

Two members will be chosen by the Minister of Labour from representatives nominated by labour; two members will be chosen by the Minister of Labour from nominations submitted by business; and five members will be chosen at large by the Minister of Labour.

The OCAC appeal panels must have a representative of labour, a representative of business and a neutral chairperson to conduct an appeal.

The MAG suggests that the Minister of Labour make every effort to appoint members to the appeal board who represent a broad range of expertise to the OCAC including not only business and labour representatives, but representatives of the medical and legal profession as well.

Appointments shall be for a period of not less than three years and no more than five years; however, members may be reappointed at the expiration of their term of appointment if it is deemed so by the Minister of Labour.

Members of the OCAC shall receive remuneration for their services on a per diem basis as determined by the Minister of Labour.

OCAC - EXECUTIVE DIRECTOR

The executive director of the OCAC shall be responsible for scheduling appeals before the OCAC and administering the offices of the OCAC.

The executive director shall not attend OCAC hearings and shall not participate in any manner in either the conduction of an appeal or in the decision making process of any appeal.

OCAC - HEARINGS

Three OCAC members will constitute a quorum to hear an appeal. One member will be appointed chairman of an appeal panel by the Chairman of the OCAC for the purposes of conducting an appeal. The consent of any two members of an appeal panel will constitute a majority decision of an appeal panel.

The **OCAC shall not hear any new or additional evidence on a file submitted for an appeal.** All decisions made during the process of an appeal to the OCAC will be made based on the evidence contained in the claimant's file when it is submitted for appeal. **All new evidence or reports shall be submitted to the claims adjudicator of the Workers' Compensation Board for primary adjudication.**

OCAC - DECISIONS

The OCAC shall provide reasons in writing to a claimant, to the Workers' Compensation Board and to an employer, for any decision the OCAC makes relative to a file - written decisions will explain in detail the justification and reasoning used by the OCAC for any decision made during the processing of an appeal.

EMPLOYERS' PARTICIPATION IN THE APPEAL PROCESS

Almost every employer who appeared before the MAG expressed a desire to have some participation in the appeal process, either internal or external. Internally the employer may appeal a claim within ten days of receiving notice that a claim has been filed.

Externally there is legal precedent which suggests that an employer is not "an aggrieved party" to a decision of either the Workers' Compensation Board or the Workers' Compensation Appeal Board and therefore has no right to participate in either a supporting or non-supporting role within the external appeal process.

The MAG however finds that the employer should have the right to participate in the external appeal process, albeit in a limited way, and **recommends the Workers' Compensation Act be amended to reflect the desire of the MAG to permit employers a degree of participation with the following provisions:**

1. employers may not appear at the same time as an injured worker before an appeal panel of the OCAC
2. the same weight will be given to testimony offered by an employer regardless of whether it is submitted in writing or presented orally
3. employers may not appeal a decision of the Board but shall be provided with a vehicle to present evidence to the OCAC when a person in their employ appeals a decision of the Board
4. The OCAC will notify employers of the date of an employee's appeal, the employer must give notice in writing of his intent to participate in the appeal 14 days in advance of the scheduled date for an appeal
5. the employer may not have access to medical information contained in an injured employee's compensation file
6. employers may receive, upon request, copies of the decisions of the OCAC relative to a claim they have presented evidence in during appeal

The MAG further recommends the OCAC issue an annual report indicating the number and type of appeals processed, identifying the decisions of the Board which were upheld or amended and outlining a clear and concise financial statement.

The MAG recommends the Minister of Labour appoint a medical Review Committee consisting of three medical specialists to provide advice on an as required basis to the OCAC when they are making decisions relative to the medical evidence contained in a file submitted for appeal.

WORKERS' COUNSELLOR PROGRAM - GENERAL

The MAG heard a variety of concerns expressed by employers and employees during the public and private hearing process concerning the current framework of the Workers' Counsellor program.

There were suggestions some workers' counsellors caused unnecessary delay in the appeals process; other suggestions implied some workers' counsellors unrealistically raised the expectations of injured workers for the sole purpose of exploiting the fee structure provided for by government.

There were also suggestions which indicating while workers' counsellors were billing government for services rendered to injured workers, persons other than designated workers' counsellors were actually performing the work related to a claimant's file.

There were recommendations from several groups indicating a desire to act on behalf of injured workers and to receive the same payment provided for by government to designated workers' counsellors.

The MAG investigated these matters thoroughly. There is no doubt the cost of providing a workers' counsellor program has escalated rapidly since its inception.

The MAG has grave concern for the escalating costs of the workers' counsellor program as this is a cost borne directly by the taxpayers of Nova Scotia as opposed to other costs of operating the Workers' Compensation Board which are charged against the Accident Fund provided for through general assessments of participating employers.

WORKERS' COMPENSATION APPEAL BOARD COSTS 1973 - 1986

Fiscal year	Expenditure	% increase/decrease
1973-74	$ 4,907.50	
1974-75	17,376.31	254%
1975-76	10,439.49	-36%
1976-77	122,665.39***	1075%
1977-78	189,122.83	54%
1978-79	256,076.19	35%
1979-80	436,816.54	70%
1980-81	407,652.23 @**	-6%
1981-82	449,719.92	10%
1982-83	471,242.94	5%
1983-84	554,673.19	17%
1984-85	682,959.09	23%
1985-86	959,569.70	41%
1986-87	910,042.26	-5%

@ change to $40 per hour from $65 per half day and introduction of fee ceiling with chief workers' counsellor

** includes salary, expenses of chief workers' counsellor

*** attributable to creation of Appeal Board

During the years in question the number of appeals to the Workers' Compensation Appeal Board were as follows:

Calendar year	# of Appeals	Denials	Awards
1976	251	140	99
1977	210	106	95
1978	129	45	78
1979	183	48	124
1980	255	84	158
1981	259	61	187
1982	293	55	230
1983	365	77	224
1984	423	75	315
1985	542	149	373
1986	606	131	471
to Aug. 31/87	437	108	351

NOTE - Totals do not always agree because some cases were pending at the close of the calendar year.

And, there is no doubt that often people other than lawyers prepare cases for appeal to the Appeal Board, where at the point of appeal the designated workers' counsellor takes over for the presentation of an appeal.

There was also some evidence to suggest some workers' counsellors do take advantage of the benefits provided by the government for payment for services, however, these were by far the exception and not the rule.

It is the feeling of the MAG that indeed persons familiar with and knowledgeable of the Workers' Compensation Act could successfully represent the concerns of an injured worker who felt unable to do so on their own behalf. However, it is not the wish of the MAG to make a recommendation to suggest this form of representation at this time.

It was also noted the Province currently employs an individual to act as a Chief Workers' Counsellor to co-ordinate and monitor the workers' counsellor program. It is the feeling of the MAG that **the Chief Workers' Counsellor should play an expanded role in representing the concerns of injured workers to the Workers' Compensation Board and to the OCAC.**

It is also the recommendation of the MAG that **the Chief Workers' Counsellor should have added to their staff enough personnel to adequately meet the demands being placed on the office of the Chief Workers' Counsellor by injured workers** seeking assistance in approaching and dealing with the Board or in seeking redress of a decision made by the Workers' Compensation Board or the OCAC.

WORKERS' COUNSELLORS - RECOMMENDATIONS

1. The Chief Workers' Counsellor should have assigned to their staff two paralegal clerks (or articling law students) in the Halifax office and one paralegal clerk (articling law student) in the industrial Cape Breton area and supporting administrative staff.

2. The Chief Workers' counsellor or staff of the Chief Workers' Counsellor's office shall handle all routine appeals to the OCAC; and, may appoint, from time to time, workers' counsellors who have been designated by government to represent claimants, as seen fit by the Chief Workers' Counsellor.

3. The Chief Workers' Counsellor or an officer appointed by the Chief Workers' Counsellor will monitor all accounts of the Workers' Counsellor Program.

REHABILITATION

The present Rehabilitation Division of the Workers' Compensation Board should have its name changed to Vocational Rehabilitation Services.

Under the auspices of Vocational Rehabilitation Services should be three small sections; **vocational rehabilitation, employment services and physical rehabilitation.**

Paramount in all activities of Vocational Rehabilitation Services should be early referral from claims to rehab and early re-activation of injured workers to suitable employment.

The Workers' Compensation Board must become innovative, proactive and aggressive in its approach to providing a wide range of rehabilitation services to injured workers. The current Workers' Compensation Act under Section 72 provides:

> " ... To aid in getting injured workers back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measure and make such expenditures as it may in its discretion deem necessary or expedient, and the expense thereof shall be borne out of the Accident Fund, and may be collected in the same manner as monies required to pay compensation or expenses of administration."

The MAG does not see any need to change the legislation regarding Rehabilitation in the Workers' Compensation Act of Nova Scotia because this section provides for the broadest range of authority to provide a myriad of rehabilitation services to workers injured in the course of employment.

However, the MAG does recommend the present Rehabilitation Division of the Workers' Compensation Board develop and make available a policy and procedural manual for internal use.

The MAG also recommends the Rehab Division begin the process of compiling timely and accurate statistical information relative to persons participating in the rehab process so that management can be aware of developing trends, program effectiveness, efficiency and cost effectiveness of its rehab programs.

It is the belief of the MAG that it will only be through the implementation of successful rehabilitation programs that injured workers can be provided with timely, practical and effective vehicles to return as a productive and contributing member of the work force.

It is the belief of the MAG, based on our research and investigations, that money spent in the short term on effective rehabilitation programs will provide an overall reduction in total dollars spent over the long term in medical, compensation and legal costs and will not only benefit employers who fund these programs but be of immeasurable benefit to the dignity and self worth of persons injured and or disabled in the course of their employment.

MEDICAL DIVISION

Perhaps no other body came under as much criticism as the Medical Division of the Workers' Compensation Board during the public and private hearing process.

Some of this criticism is warranted and some of the criticism was unfairly directed towards the medical division; however, this statement notwithstanding, **the preponderance of information presented to the MAG indicates the necessity for a fundamental change in the approach of providing medical services through the workers' compensation system of this province.**

The MAG is adamant the medical officers of the Workers ' Compensation Board of Nova Scotia have absolutely no role to play in the claims adjudicative process. In fact **the classification of doctors as "medical officers" at the Workers' Compensation Board should be changed to "medical advisors"** to reflect that philosophy.

The role of the medical advisors should be **confined to providing medical impairment ratings and responding to requests from claims adjudicators for clarification of medical condition, treatment or medical terminology.**

The Director of Medical Services should and must **undertake a major information program designed to educate and inform family physicians and health specialists** of the unique and important role they play in the workers' compensation programs of Nova Scotia.

The Director of Medical Services should undertake an information program designed to educate family physicians and health specialists of the medical impairment rating schedules in use by the Board so that medical impairment ratings conducted by treating physicians and health specialists are more in line with the medical policies and procedures of the Workers' Compensation Board of Nova Scotia.

The medical advisors of the Workers' Compensation Board should not actively intervene in the treatment of injured workers. The monitoring of treatment, except in the most extreme cases should be left to the treating physician.

Should a medical advisor of the WCB express concern in regard to the method, timeliness or progress of treatment ordered by a treating physician then the medical advisor may require the injured worker to be referred to a specialist.

The WCB will make available a list of all specialists supplied to the Board by the medical profession, the treating physicians will choose from this list three names acceptable for referral of their patient. The WCB's medical division will make appointments in order of the first available specialist of the three names chosen by a treating physician.

The report of the specialist will be the determining factor to be considered by the claims adjudicator in making further or additional decisions on the claim file.

INDUSTRIAL DISEASE

Schedule A - this section **should be deleted from the Act** and a new section written that indicates " ... any illness or injury that can be shown to be related or caused by one's employ is to be considered an industrial disease ..."

DEFINITION OF ACCIDENT

The MAG **recommends the Board adopt a definition of accident** to include the principle that the Act provide coverage for injuries arising out of employment other than those caused by a specific trauma.

CANADA PENSION PAYMENTS

The MAG recommends any person receiving compensation or rehabilitation benefits for a period exceeding six months shall have the **voluntary option** of having Canada Pension contributions paid on their behalf by the Workers' Compensation Board and that such payments **shall be deducted from** their normal level of benefits.

AUTOMATIC ASSUMPTION - FULL TIME FIREMEN

The MAG has examined the proposal for automatic assumption for heart and lung disease for full time firemen. It is the feeling of the MAG that the recommendation contained in this report under the title of "Industrial Disease" adequately addresses this issue.

Certainly, it is the opinion of the MAG, that any heart or lung problems that can, by objective medical evidence, be shown to be caused by or directly related to employment should be fully covered under the terms of the Workers' Compensation Act.

EYE POLICY

The MAG recommends the Workers' Compensation Board adjust its current eye policy to compensate workers not at the rate of disability after corrective glasses are applied but rather the difference between the rate of disability without corrective lenses and the disability after corrective lenses.

BENEFIT TERMINATION

The MAG **recommends clients be given a minimum of 21 days' written notice prior to the termination of benefits wherever and whenever it is feasible to supply such notice.**

The MAG recommends **the notice of termination of benefits shall include the reasons for termination and instructions in how the client should proceed if the client is in disagreement to the date contained in the notice for the termination of benefits.**

CLAIMS DIVISION

The MAG is very concerned about quality control and consistency in the processing of claims at the WCB and in the determination of the decisions and medical impairment ratings of injured or permanently disabled workers.

Therefore, the MAG recommends **the Claims Division should have in place a review process that requires all recipients of permanent partial disability pensions and permanent total disability pensions be required to appear at the Board every 24 months for medical re-assessment.**

The WCB should **consider the implementation of the "full service unit" approach to claims processing** whereby claims adjudicators, rehab assistants and medical advisors are located in one area to expedite the processing of claims and enhance the early intervention of rehab in the claims process.

The MAG, based on research data gathered from all other Boards in Canada, **recommends the hiring of 2 - 4 additional claims adjudicators** as Nova Scotia has the highest claims to adjudicators ratio in the entire country.

Province	1986 Claims	Adjudicators
New Brunswick	34,000	6
Newfoundland	19,355	17
Ontario	442,080	230
P.E.I.	5,000	2
Quebec	330,000	700
Manitoba	54,514	29
British Columbia	156,312	100
Saskatchewan	37,034	50
Alberta	83,883	88 + 10 trainees
Nova Scotia	38,000	6

The addition of 2 - 4 claims adjudicators will provide senior adjudicators more time for claims investigation and will meet the additional demands for regionalized services which will be addressed later in this report.

All claims, assessment and medical personnel dealing directly or indirectly with injured workers, employees, employers and the general public should have the opportunity to participate in professional development courses and programs especially those offered in relation to personal and inter-personal skill development.

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SUPPLEMENTARY BENEFITS

The MAG feels there is some merit in examining a voluntary system which would provide for supplementary benefits for those employees who wish to contribute to a plan which would have the Workers' Compensation Board pay to the employee the difference between their regular Compensation benefits and their salary, up to the maximum level of assessable earnings, at the time of injury.

The MAG recommends **the Workers' Compensation Board research such a proposal for voluntary contributions by the employee to a supplementary benefits program** and recommend to the minister the viability of such a program.

PRE-EXISTING CONDITION

The MAG has examined Section 7(2) of the Act and is of the opinion this section adequately addresses the issue of pre-existing condition by allowing compensation for aggravation, activation or acceleration of an existing disability, if in fact that disability is relatable to a job associable injury.

TOLL FREE TELEPHONE NUMBER

The MAG examined the possibilities of recommending a toll free calling system for the Board to enable clients to call the Workers' Compensation Board to obtain responses to business and personal queries.

It was determined such a system would be extremely costly and non-productive. The Board currently handles approximately 600 calls a day at the switchboard in addition to countless direct calls to individual personnel.

The Board has recently installed a new telephone system providing direct access to individual departments; this report recommends increased regionalized services and therefore **it is the opinion of the MAG a toll free calling system is not warranted at this time.**

HELPLESS ALLOWANCE

The MAG recommends any reference to the "Helpless Allowance" contained in the Workers' Compensation Act be changed to the "Attendants Allowance".

The MAG further recommends **the "Attendants Allowance" be increased from $350.00 per month to $400.00 per month.**

PARAPLEGICS - QUADRAPLEGICS

The MAG recommends **the Board purchase a number of wheel chairs suitable for the use of quadraplegics and paraplegics and make these available on a "loan" basis** to persons who do not possess a second chair in the event that their ordinary chair is being repaired or replaced.

UNIVERSAL ASSESSMENT - UNIVERSAL COVERAGE

The MAG has examined the principle of universal assessment of employers especially in light of the Charter of Rights and Freedoms. The present system provides for coverage for all employers except those excluded by legislation.

The MAG also examined universal assessment versus the principles of universal coverage. Currently all employers, except those excluded, with three or more employees are required to be assessed for coverage under the Workers' Compensation Act.

The MAG finds merit with the principle of universal assessment, that is, all employers, with no exclusions, should be assessed if the employer has three or more employees.

Workers' Compensation is, without doubt, the least expensive form of liability insurance available, and provides employees and employers with the widest range of benefits for persons injured in the course of their employment.

In fact, most of the employment areas presently excluded are among the lowest risk categories, therefore, the cost of providing these benefits to a wide range of workers is minimal. For example, the lowest rate in one jurisdiction is .05 cents per one hundred dollars of assessment - therefore, if an employee were earning $400.00 per week, the cost of providing that employee with coverage under the Workers' Compensation system would be .20 cents a week.

For the most part, banks, accounting firms, lawyers and financial firms represent the largest number of employers excluded under the present system. The MAG feels it is discriminatory to exclude these workers from coverage available to workers in other employment.

The MAG **recommends the principle of UNIVERSAL ASSESSMENT** be adopted in Nova Scotia in keeping with the provisions contained in the Charter of Rights and Freedoms and similarly adopting the same logic the MAG is prepared to **recommend the principle of UNIVERSAL COVERAGE be adopted** in Nova Scotia as well, so that all employees, regardless of the size of the employer they are employed by may avail themselves of the benefits contained in the Workers' Compensation Act of Nova Scotia. Therefore, under this proposal all employers with one or more employees would be assessed.

ASSESSMENT

Section 2(1)(2) - **this section should be amended to adopt the principle that all industries are to be included in the list of industries covered** with the exception of exclusions (universal assessment).

Reg. 2, Section 1(a)(b) - The MAG recommends legislation be adopted where every industry in Nova Scotia would come under Part I of the Act if at least one worker is employed. (universal coverage).

MERIT RATING

The MAG finds some credence to recommendations relating to merit and/or experience rating in the process of setting assessment rates for industry. The MAG also notes the Board has a modified merit rating system in place at the present time.

The MAG is aware the Board is currently reviewing its rate setting policies and procedures, however, the MAG is most emphatic that a total experience rating system will not successfully work in Nova Scotia unless the principles of universal assessment and universal coverage are adopted to broaden the employer base.

The MAG recommends the Board use extreme caution in examining any enhanced merit rating or experience rating program keeping in mind the uniqueness of the Nova Scotia business and industrial base.

However, should government adopt the recommendations for universal assessment and universal coverage recommended by this Group the MAG recommends the Board explore, at the earliest opportunity, a method of experience rating which will serve primarily to promote accident prevention and occupational health and safety measures and which shall not provide for a flexibility in setting rates which will place undue financial hardship on any business or industry.

The MAG further recommends that any system of experience rating or merit rating developed by the Board should, while giving credit to good performers and penalizing bad performers, maintain the principle of collective liability on which the theory of compensation is entrenched.

STATISTICAL INFORMATION

The MAG received many representations by employers requesting the Workers' Compensation Board supply business and industry with regular accident and accident costs statistics to enable employers to manage their accident prevention programs and to better monitor compensation costs.

The MAG is aware of recent initiatives by the Board in this regard and **recommends the Workers' Compensation Board develop and implement a program to provide business and industry with timely, accurate statistical information on a regular basis.**

NON-REPORTING OF ACCIDENTS

Section 56 - The Act presently provides that any employer who fails to comply with the requirements of Section 56(1)(2) which demands an employer report any accident within three days of the date of occurrence of the accident is liable to a penalty not exceeding $50.00.

The MAG notes this section has never been enforced by the Board. During the review of the claims process it was observed that often some delay in the processing of claims is due to the fact that employers sometimes fail to report accidents as expeditiously as the Act requires.

The MAG recommends Section 56 be amended to reflect the principle that employers shall be required to report an accident within three days of the accident and that failure to do so shall result in a penalty - $50.00 for the first offence in a 12 month period; $100.00 for a second or subsequent offence in the same 12 month period; and the Workers' Compensation Board shall enforce the penalty as a means of encouraging employers to live up to their responsibilities within the legislation.

ASSESSABLE PAYROLL

Section 1(1) - The MAG recommends that a definition for assessable payroll be included in this section and that the definition for assessable payroll include such things as salaries, wages, dividends, bonuses, lump sum payments for contract work et al.

GENERAL ASSESSMENTS

Regulation 2, Section 2(a) - the MAG recommends the words "Florist" and "Horticulture" be deleted and the words "when conducted as a part of a farming operation" be added to the end of the paragraph.

Regulation 2, Section 2(f) - the words "golf courses" be deleted and the words "all sports when conducted as an industry" be added.

Regulation 2, Section 2(1) - the following words be added to the end of the paragraph, "all work related to travelling carnival shows and circuses".

Regulation 2, Section 7 - the words, "clerk, treasurer and manager" be deleted.

Regulation 2, Section 12 - (travelling salesmen) this section be deleted.

Regulation 7, Section 2 - the words "$50.00" be changed to "$100.00" to reflect a greater deterrent.

Regulation 7, Section 3 - the words "5%" be changed to "10%" and the words "1" be changed to "2" to reflect a greater deterrent.

Regulation 7, Section 4 - The MAG recommends this section be amended to read "if any assessment is not paid within the time mentioned in the Notice of Assessment, the faulting employer shall pay an additional amount equal to 2% of the amount unpaid for each calendar month or fraction thereof and that each such default continues in addition to any other employer to which the employer may be liable.

Regulation 7, Section 5(a) - the words "$50.00" be deleted and the words "$100.00" be added to serve as a greater deterrent.

Regulation 7, Section 6 - the words "5%" be deleted and the words "10%" be added, the words "1%" be deleted and the words "2%" be added.

Regulation 7, Section 9(b) - everything after "rate of" be deleted and the following added, "2% per month or fraction thereof on such amount from July 1 of the year in which the work is covered, be the estimated payroll which was carried on until the notification of the actual payroll is received.

BENEFITS - DATE ALLOWED

Section 7(1)(a) - It was noted by the MAG that the current waiting period of three days before injured workers would be entitled to receive compensation benefits following an accident actually served to increase the time workers spent recuperating from minor accidents in order to be eligible to receive compensation benefits.

Therefore, **the MAG recommends this section be amended to include the principle that the employer pay the employee wages for the day of an injury and the Workers' Compensation Board begin paying the following and subsequent days.**

CLAIMS - THIRD PARTY

Section 15(a) 14(1) - this section be revised to allow for early collection of information in third party claims and that notwithstanding any other section of the Act the period of choice should be set at two months.

OBJECTIONS TO COMPENSATION CLAIMS

Section 21 - this section currently provides that any person wishing to object to a claim can do so within 10 days of the date such claim has first been reported to the person objecting.

Because so many businesses have head offices which are located outside the province and because a decision to object may be the determination of management outside the immediate jurisdiction **the MAG recommends this section be amended to read "10 normal working days"** as opposed to 10 days in order to provide a fair opportunity to object.

SCALE OF COMPENSATION

Section 30(a) - It is the feeling of the MAG that the present provision of the Board providing a sum not exceeding $750.00 to cover the cost of burial expense is grossly inadequate.

The MAG is also of the opinion that no matter what amount is set while it may be adequate at this particular point in time, it may not be adequate, without further amendment, at a point later in time.

Therefore, it is the recommendation of the MAG that the WCB in December of each calendar year conduct a survey to determine the average cost of an average funeral in that calendar year in Nova Scotia and that this amount be payable according to the provisions of Section 30(a) for the ensuing calendar year. For example, if the average cost of burial in 1987 were $1,350.00, then the bureau expense allowed by the Board for 1988 shall be $1,350.00.

It is further recommended by the MAG the Board pay the actual expenses of the transportation of the body of the worker from the place of death to the place of residence, whether the death occurred within or without the Province of Nova Scotia.

PENSIONS FOR SURVIVING SPOUSE

The MAG recommends that pensions for surviving spouse following an accidental death should be based on actual loss of earnings as opposed to flat amounts as outlined in Section 30 of the Act.

The MAG recommends that a surviving spouse be paid a lump sum of $5,000.00 following the accidental death of a worker in addition to whatever pension amounts are paid.

COMMON LAW SPOUSE

Section 30(a) - **The MAG recommends the words "common law widow" be changed to "common law spouse"** and the Board adopt the definition cf common law spouse currently in use by the Department of Social Services.

TEMPORARY TOTAL DISABILITY

Section 32 - this section denotes the fact that the rate of compensation paid will be 75% of the workers' average weekly earnings for the previous twelve months.

The MAG has reviewed the rate of compensation currently being paid to workers. It was noted that because of income tax deductions some workers having three standard deductions netted more on Compensation then they would if they were continuing to be paid by their employer. This would appear to apply to most workers claiming single deductions and earning in excess of $22,000.00 per annum.

This system removes any financial incentive there is to the worker to return to work as soon as possible. It was also noted by the MAG that the majority of Boards in Canada have now opted for a rate of compensation which is based on net salary as opposed to gross salary.

Therefore, **the MAG recommends <u>the rate of compensation be 90% of net earnings</u>** allowing for the three standard deductions of income tax, Canada Pension and unemployment insurance premiums.

Workers' income tax deduction will be based on information contained in the employer's report of earnings. It was also noted that many individuals claim single deductions when they actually have dependents.

Therefore, **the MAG recommends the Board adjust a worker's benefit to correspond with information contained on the worker's income tax reporting form for claiming dependents** if this information is made available by the employee to the Workers' Compensation Board.

COMPUTATION OF EARNINGS

Section 43 - **the MAG recommends the initial rate of compensation be based on the worker's prior 4 weeks' wages.** If the worker is off more than eight weeks, the rate of compensation will be adjusted to reflect the worker's average earnings for the previous year.

This change should be applied to reflect the financial benefit of the worker, i.e. if the 12 month average is greater than the 4 week average, then the worker shall be paid at the greater amount.

MAXIMUM ASSESSABLE EARNINGS

The MAG recommends the Workers' Compensation Board develop a formula to provide for adjustments in the maximum level of insurable earnings.

The formula should provide for increases in the maximum assessable earnings to be tied to increases in the average per capita earnings in the Province of Nova Scotia. The MAG feels having a formula tied to increases in average per capita wages in Nova Scotia will more accurately reflect changes in the Nova Scotia experience.

MINIMUM ASSESSABLE EARNINGS

Presently there is no formula in place to set a minimum amount to be assessed by the Board from employers. **The MAG feels there is good cause to set a minimum assessable salary level and recommends the minimum be set at 150% times the current minimum wage in Nova Scotia.**

The MAG further recommends **the minimum assessable earnings level be adjusted by the same formula each time minimum wage levels are adjusted in the province.**

INCREASES IN PENSIONS BENEFITS

The MAG notes that since 1975 increases in pension benefits have been tied to increases in the Consumer Price Index as determined by Statistics Canada, pension recipients receive a 2% increase in pensions for every 2% increase in the Consumer Price Index.

It is the feeling of the MAG that a more appropriate method of determining increases in pension benefits would be to tie increases to those benefits to the average per capita increase in wage in the Province of Nova Scotia and recommends this proposal.

The MAG also recommends that pensions shall be increased by the exact percentage increase in average per capita wages - a 3.5% increase in per capita wage would mean a 3.5% increase in pension benefits.

DURATION OF PAYMENTS

Section 47(1) - the MAG recommends the age for extended education benefits be raised from the currant 21 to age 25 as long as the dependent's education is actually being continued.

RETENTION OF BOARD FILES

The MAG recommends, based on technological advancements in computer systems, a section be added to the Act which allows the Board to reduce the period of time files must be retained by the Board. The current practice is 10 years, the MAG recommends this be changed to five years.

REMARRIAGE OF A DEPENDENT WIDOW

Section 51 - the MAG **recommends this section be amended to reflect the principle that a dependent spouse shall not give up their right to compensation upon remarriage.**

REGIONAL SERVICES

The MAG is impressed with the efforts the Workers' Compensation Board has made in the past three years to improve the level of services it provides to the industrial Cape Breton area.

However, it is the feeling of the MAG that more can be done to expedite the processing of claims in Cape Breton. The Cape Breton regional office is located in Sydney. Employed in this office are a number of claims processing staff below the adjudicator level, a medical officer, a rehab officer and administrative support staff.

It is the recommendation of the MAG that the Claims Department services provided in the Cape Breton office be expanded to include claims adjudication and medical aid claims only processing.

It is further recommended Rehab Services be expanded to include a full time employment counsellor as well as the addition of one rehab counsellor to the present staff complement of one.

It is also the recommendation of the MAG that due to computer enhanced financial controls procedures that compensation cheques should be issued directly from the Cape Breton regional office for recipients in Cape Breton.

The MAG recommends a "fully serviced" regional office for industrial Cape Breton responsible for the day to day processing of claims, the rehabilitation of injured workers and the general administration of the Act.

OLD AWARDS

The MAG has examined all recommendations made to the committee relative to dealing with old awards and notes there is merit in developing a formula and plan to address this problem.

Perhaps more than any other issue raised before the MAG, this recommendation created the most cause for concern primarily because the major question becomes not whether or not pension recipients are worthy of benefit adjustments, but rather who in fact will pay for these increases.

The MAG also noted that since 1975 all pension increases were tied to increases in CPI and, therefore, the major concern was adjusting pension levels prior to 1975.

The MAG also considered that pension benefits were raised effective December 31, 1986 so that the minimum base rate was raised to $700.00 per month and that from that date on the least amount of benefit was based on $700.00 per month.

The MAG recommends that the minimum base rate on which all pensions are paid should be tied to the minimum assessable earning rate, therefore, the minimum base rate shall be 150% times the minimum wage - the present minimum wage is $8,000.00 per annum.

$8,000.00 x 150% = $12,000.00. The MAG recommends that all pension recipients have their pension benefits adjusted to reflect a minimum amount payable of $12,000.00 x 75% the percentum of disability.

The MAG further recommends that pre-1975 pension recipients receive a lump sum equal to $250.00 x the difference between the year of accident and 1975 x the percentage degree of disability.

Recipients of pensions funded by self-insurers will receive their adjustments from the self-insurer.

RESEARCH

The MAG is of the opinion the administration of the Workers' Compensation Board is weak in the area of research.

There is no particular division at the Board responsible for monitoring what is happening in other jurisdictions, compensation trends in North America or developing policy changes in the compensation world.

It is the feeling of the MAG the Workers' Compensation Board must become more pro-active in this regard. The Board itself should assume an active role in the process of advising government of legislative changes needed to keep the Workers' Compensation Act relevant to the work environment of the 80's, 90's and on into the new century.

The MAG recommends the establishment of an active and aggressive research capability at the Board to provide support services to the Board and to the office of the Minister of Labour on issues relevant to Workers' Compensation in Nova Scotia.

PUBLIC AFFAIRS

The MAG is extremely encouraged with the establishment of a Public Affairs capability at the Board. It was obvious during the public and private hearing forums conducted by the MAG that both employers and employees suffered a general lack of knowledge about compensation, its benefits and its programs in this province.

The MAG is encouraged by the activity in this area over the last number of months as it is the opinion of the MAG that the exchange of information between the Board, the media, employers, employees and the general public is of paramount importance to improving the liaison between all of these parties about the role of compensation in the modern work place.

The MAG recommends the Workers' Compensation Board continue to improve on this capability within their administration through aggressive, professional and pro-active policies to improve the Board's position in the work place.

ADMINISTRATION

The MAG is particularly impressed with the administrative changes the management of the Workers' Compensation Board has accomplished, most notably, during the past 36 months and especially during the past twelve months.

It is a credit to the present management that modern business practice and procedures have been embraced in such a positive manner, this can only reflect in a high level of service delivery to compensation clients.

The recommendations offered by the WCB to the MAG for changes to the Workers' Compensation Act are indicative of the responsible and responsive manner in which the staff of the WCB perform a most difficult task.

RIGHT TO RETURN TO WORK

The MAG examined a series of proposals aimed at guaranteeing the return to the pre-injury employment of workers injured in the work place.

While this proposal has some merit, the MAG is of the opinion the extent to which it is recommended is unreasonable. However, the **MAG does recommend the Act encourage employers to give hiring preference, when it is feasible, to workers who have successfully completed or are participating in rehabilitative programs of the Workers' Compensation Board of Nova Scotia.**

AUTOMATIC ASSUMPTION

The MAG notes that currently when an individual is in receipt of an automatic assumption pension, those benefits cease upon death of the recipient and no benefits are transferred to the surviving spouse.

The MAG recommends the surviving spouse shall continue to receive normal survivors benefits if the pensionable spouse was receiving an automatic assumption benefit prior to their death.

ACCIDENT PREVENTION - OCCUPATIONAL HEALTH & SAFETY

The MAG notes the responsibilities for accident prevention have been transferred from the Workers' Compensation Board to the Occupational Health and Safety Division of the Department of Labour.

Therefore, the MAG recommends the sections of the Workers' Compensation Act dealing with accident prevention be deleted from the Act.

The MAG further recommends that a greater liaison between the Board and the Occupational Health and Safety Division be developed as both of these bodies are inter-dependent on one another for the effective administration of the Workers' Compensation Act and the effective administration of the Occupational Health and Safety Act.

WAGE LOSS VERSUS DISABILITY BENEFITS

The MAG has examined wage loss systems currently in place in other jurisdictions and has determined a pure wage loss system is not the panacea for all problems confronting the workers' compensation in Nova Scotia.

The MAG prefers an approach that melds both a wage loss system and a system based on physical disability as it is the opinion of the MAG that the difficulties arising from assessing levels of physical disability are minor compared to the severe problems other Boards in Canada are having with the "deeming" process of determining the difference between what a person is earning or is able to earn.

The MAG recommends that a financial incentive be provided to injured workers to return to work as soon as possible. If a worker returns to a job where the worker is earning less than the salary the worker was earning in the pre-injury employment, then the worker shall be compensated for the difference between what the worker is presently earning and what the worker was earning in the pre-injury employment.

This benefit would extend for a period of 24 months after which the worker shall receive benefits reflecting the worker's physical disability if such physical disability exists.

If the worker is unable to return to work because of the physical disability and fails to find employment after participating in a rehabilitation program, then **the worker shall be compensated according to the worker's physical disability and such payments shall continue during the life of the worker.**

The MAG wishes to point out that while suggestions put forth recommending a full wage loss system appear to be reasonable on the surface, in depth examination indicates a total wage loss system can only work successfully when it is based on a full employment model; and, since this is not the case in Nova Scotia, or for that matter in any other province of Canada, **the MAG recommends that government amend the legislation to support the melding of the two systems as the MAG addressed this issue in this report.**

HEARING LOSS

The MAG recommends the Workers' Compensation Board make available the tables and requirements in use to assess occupational hearing loss and further recommends the Board make use of outside services to assess hearing loss but that those services be confined to Canadian professionals.

CHIROPRACTORS

It is the opinion of the MAG that chiropractic services have a definitive role in the treatment of some Workers' Compensation clients. **The MAG recommends the Board review its policies relating to chiropractic services and extend coverage where it is medically appropriate to do so.**

The MAG further **recommends the Board make some effort to develop an improved liaison with the provincial chiropractic society** so that there is an on-going exchange of information between the Board and this section of the medical community.

PHYSICAL DISABILITY SCHEDULE

The MAG reviewed the system currently in place to assess degrees of physical disability and also examined the American Medical Association method of measuring physical disability.

The MAG recommends the current system in use by the Board be reviewed and a more up to date system be developed by the Board in co-operation with the Nova Scotia Medical Society to provide for new tables measuring degrees of physical disability.

The MAG further **recommends any reference in the Workers' Compensation Act made to physical disability assessment be changed to medical impairment rating.**

THE WORKERS' COMPENSATION ACT

The **MAG recommends the entire Act be rewritten** to modernize the language; remove references to workman in favour of worker; address potential discrimination in regards to surviving spouses as opposed to surviving widows; to ensure the principles contained in the Charter of Rights and Freedoms are embodied in the legislation; re-organize the presentation of the Act so sections dealing with pension, etc. are grouped together for better understanding; and, to generally make the Act more understanding to the general public.

REVIEW OF THE ACT

The MAG recommends there is just cause to substantiate the necessity of having automatic periodic reviews of the Workers' Compensation Act and **recommends that such reviews take place every four years.**

Such a proposal will guarantee a regular and periodic objective review of the legislation and ensure that the Worker's Compensation Act of Nova Scotia remains in tune with changes taking place in the Nova Scotia work place and in tune with the compensation requirements of a modern and ever-changing work place.